



THE PRESIDENT

TO: Lilien F. Robinson
FROM: Stephen J. Trachtenberg
SUBJECT: 2000-01 Faculty Senate Resolutions
DATE: June 27, 2001

Lilien: I am responding to John Boswell's memorandum of April 30, 2001 providing a compendium of resolutions acted upon by the Faculty Senate during its 2000-01 session. As Professor Boswell requested, I am pleased to attach the response of the Administration to these resolutions for inclusion in the Faculty Senate Annual Report.

SJT/h
Attachment
cc+ John Boswell
Donald Lehman

RESOLUTIONS 2000-01 SESSION

| Resolution No. | Date of Meeting | Title of Resolution | Action | Response of administration |
|----------------|-----------------|--|--|--|
| (99/6) | 5/5/00 | A Resolution to Endorse the Policy and Procedures Governing Sexual Harassment Complaints | 5/5/00 Adopted, as amended | Policy sent for outside professional review by lawyers specializing in these matters due to concerns about compliance with federal statutes and its general fairness owing to its applicability to the whole University community. |
| 00/1 | 5/5/00 | A Resolution Opposing the Special Fees for Majors in the Programs of the School of Media and Public Affairs | 5/5/00 postponed; withdrawn 1/19/01 | |
| * 00/2 | 10/13/00 | A Resolution on Amending Resolution 99/2, "A Resolution to Amend the 1996 <u>Faculty Code</u> of The George Washington University" | 10/13/00 Adopted, as amended | Approved by the Board of Trustees October 20, 2000 |
| 00/3 | 10/13/00 | A Resolution Accepting with Approval the Report of the Joint Faculty/Administration Task Force on the Proposed College of Professional Studies | 10/13/00 Adopted, as amended | Received and acknowledged. |
| 00/4 | 1/19/01 | A Resolution Requesting the University Administration to Take Appropriate Measures to Discourage Infringement by Students and Other Persons of Faculty Members' Intellectual Property Rights in Their Course Presentations | 1/19/01 Adopted, as amended | Received and acknowledged. |

00/4 10/13/2000 A Resolution of Appreciation for Walter Michael Bortz (continued)

*CODE

- omitted from tabulation sent to SRT. Error discovered 6/17/04

RESOLUTIONS 2000-01 SESSION

| Resolution No. | Date of Meeting | Title of Resolution | Action | Response of administration |
|----------------|-----------------|---|--------------------------------------|---|
| | | | | There are 3 resolving clauses to this Resolution: |
| * 00/5 | 3/9/01 | A Resolution with Respect to Action Taken by the University's Board of Trustees in Response to Resolution 99/2, "A Resolution to Amend the 1996 Faculty Code of The George Washington University" | 3/9/01 Adopted, as amended | 1) The Administration shared this Resolution with the Academic Affairs Committee of the Board of Trustees. They would be willing to consider any further suggestions for enhancing the subject of the Resolution that the Faculty Senate wishes to provide. 2) We concur. 3) This seems based on a misperception of what took place. No modifications were made to the Senate's submission. |
| 00/6 | 4/13/01 | A Resolution on the Revised Draft of the Sexual Harassment Policies and Procedures | Postponed 4/13/01 | Postponed to Special Meeting on April 27, 2001 |
| " | 4/27/01 | (same as above) | 4/27/01 Adopted, as amended | In process. |
| 00/7 | 4/13/01 | A Resolution of Appreciation for Professor John G. Boswell | 4/13/01 Adopted by acclamation | Great! |

* Code

**A RESOLUTION TO ENDORSE THE POLICY AND PROCEDURES
GOVERNING SEXUAL HARASSMENT COMPLAINTS (99/6)**

*with final
Policy*

WHEREAS, the Faculty Senate, in a meeting on December 11, 1998, passed a resolution to refer the Interim Policy and Procedures Governing Sexual Harassment Complaints to an Ad Hoc Committee for review; and

WHEREAS, the Ad Hoc Committee has reviewed the Interim Policy and Procedures and, based upon wide-ranging consultation, the study of sexual harassment policies from other institutions, the study of sexual harassment literature and court cases, has recommended changes to the Interim Policy and Procedures both in the interests of clarification and simplification and in substance; and

**WHEREAS, the Faculty Senate resolution of December 11, 1998, directed the Ad Hoc Committee to report its recommendations with respect to any changes to the Interim Policy and Procedures Governing Sexual Harassment Complaints to the Faculty Senate;
NOW, THEREFORE**

**BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON
UNIVERSITY**

That the Faculty Senate endorses the Policy and Procedures Governing Sexual Harassment Complaints as recommended by the Ad Hoc Committee.

**Ad Hoc Committee to Review Interim Policy and
Procedures Governing Sexual Harassment Complaints
January 12, 2000**

Postponed, March 10, 2000, to April 14, 2000

Recommitted, April 21, 2000, to Ad Hoc Committee

Adopted, as amended, May 5, 2000

[AS AMENDED BY THE FACULTY SENATE, April 14, April 21, & May 5, 2000]

AS RECOMMENDED BY THE AD HOC COMMITTEE ON POLICY AND PROCEDURES GOVERNING SEXUAL HARASSMENT COMPLAINTS

SEXUAL HARASSMENT POLICY AND PROCEDURES

First principles of this policy

The George Washington University is committed to maintaining a positive climate for study and work, in which individuals are judged solely on relevant factors, such as ability and performance, and can pursue their activities in an atmosphere that is free from coercion and intimidation. The University mission statement provides that the University "values a dynamic, student-focused community stimulated by cultural and intellectual diversity and built upon a foundation of integrity, creativity, and openness to exploration of new ideas." The University is committed to free inquiry, free expression, and the vigorous discussion and debate on which advancement of its mission depends. Sexual harassment is destructive of such a climate and will not be tolerated in the University community.

Objectives

This policy and these procedures aim to inform members of the University community what sexual harassment is and what they can do should they encounter or observe it. The University prohibits sexual harassment by any student, staff member, faculty member, and others in the University community; encourages reporting of sexual harassment before it becomes severe or pervasive; identifies accessible persons to whom sexual harassment may be reported; requires persons (whether faculty, staff or student) in supervisory or evaluative roles to report sexual harassment complaints to appropriate officials; prohibits retaliation against persons who bring sexual harassment complaints; assures confidentiality to the full extent consistent with the need to resolve the matter

appropriately; assures that allegations will be promptly, thoroughly, and impartially addressed; and provides for appropriate corrective action.

The ultimate goal is to prevent sexual harassment, through education and the continuing development of a sense of community. But if sexual harassment occurs, the University will respond firmly and fairly. As befits an academic community, the University's approach is to consider problems within an informal framework when appropriate, but to make formal procedures available for use when necessary.

What sexual harassment is

The University has adopted the following definition of sexual harassment, substantially derived from Equal Employment Opportunity Commission and Department of Education statements:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is explicitly or implicitly made a term or condition of academic participation or activity, educational advancement, or employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions that affect the individual; (3) such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or limiting participation in University programs; or (4) the intent or effect of such conduct is to create an intimidating, hostile, or offensive academic or work environment. Sexual harassment may occur without regard to either party's gender.

Nothing in this policy limits academic freedom, guaranteed by the Faculty Code, which is a pre-eminent value of the University. This policy shall not be interpreted to abridge academic freedom. Accordingly, in an academic setting expression that is reasonably designed or reasonably intended to contribute to academic inquiry, education or debate on issues of public concern shall not be construed as sexual harassment.

A person who commits sexual harassment in violation of this policy will be subject to disciplinary action, up to and including expulsion or termination.

Prevention; dissemination of information

The University is committed to preventing and remedying sexual harassment of students, faculty, and staff. To that end, this policy and these procedures will be disseminated in the University community. In addition, the University will sponsor programs to inform students, faculty, and staff about sexual harassment and the problems it causes; advise members of the University community of their rights and responsibilities under this policy and these procedures; and train personnel in the administration of the policy and procedures.

Consensual relationships

Relationships that are welcomed by the parties do not entail sexual harassment, and are beyond the scope of this policy. Whether a relationship is in fact welcomed will be gauged according to the circumstances; special risks are involved when one party -- whether a faculty member, staff member or student -- is in a position to evaluate or exercise authority over the other. Even when both parties previously consented to a sexual relationship, a charge of sexual harassment may be based on subsequent conduct that one of them does not welcome. Members of the University community are cautioned that consensual relationships, as well as relationships that are not consensual, can in some circumstances entail abuse of authority, conflict of interest, or other adverse consequences that may be addressed in accordance with pertinent University policy and practice.

What to do

Three procedural avenues of redress are available to members of the University community who believe that sexual harassment has occurred -- consultation, informal resolution, and formal complaint. Often, concerns can be resolved through consultation or informally resolved. If the matter is not satisfactorily resolved through the consultation or informal resolution procedure, a formal complaint may be initiated.

Consultation

A member of the University community who is uncomfortable with one or more instances of conduct of a sexual nature that may be inappropriate (even if the person is unsure whether the conduct constitutes sexual harassment), may discuss the matter with the person who has engaged in the behavior or with his or her department chair, dean, staff supervisor, or Dean of Students. Alternatively, or in addition, the offended person may seek University-level assistance by initiating consultation regarding the matter, by contacting the Office of the Vice President and General Counsel. That Office will assign a Coordinator to the case and arrange an initial consultation. The Coordinator will provide a copy of the sexual harassment policy and procedures, respond to questions about them, assist in developing strategies to deal with the matter, and work in accordance with the procedure set forth in Appendix A.

Alternatively, the individual may discuss the matter with the Director of the Office of Equal Employment Activities, the Dean of Students, or the Assistant Vice President in the Office of Faculty Recruitment and Personnel Relations, any of whom may determine the need to refer the matter to the Office of the Vice President and General Counsel, for assignment to a Coordinator.

Informal resolution procedure

An informal resolution procedure, which is initiated in the same manner as a consultation, entails an investigation by the Coordinator of the charges in accordance with Appendix B.

Formal complaint procedure

The formal complaint procedure is available when the informal resolution procedure fails to resolve satisfactorily the allegation of sexual harassment. The person who made the allegation of sexual harassment (the "Complainant"), the person against whom the allegation was made (the "Respondent") or a responsible University official may initiate a formal complaint.

A formal complaint is initiated by submitting to the Coordinator a signed, written request to proceed with a formal complaint. The request is due within 15 business days after the person

receives from the responsible University official a statement of the disposition of the informal resolution procedure. The Coordinator will inform the requesting party of the process that will be followed and provide a copy of the applicable procedure.

The Code of Student Conduct will govern the formal complaint procedure when both parties are students. The applicable staff grievance procedures will govern the formal complaint procedure when both parties are staff members. The formal complaint will be resolved in accordance with the Formal Complaint Procedures set forth in Appendix C, when: (a) the Complainant is a student and the Respondent a faculty or staff member; (b) the Complainant is a faculty member and the Respondent a staff member or student; (c) the Complainant is a staff member and the Respondent a faculty member or student; or (d) the Complainant and Respondent are faculty members.

Outcomes

If the informal resolution procedure or formal complaint procedure results in a determination that sexual harassment occurred, the findings and recommendations shall be referred to the appropriate University official for imposition of corrective action, including sanctions that the official is authorized to impose; provided that an informal resolution procedure may not result in a sanction unless the Respondent has consented thereto. A range of relevant considerations should be taken into account in determining the extent of sanctions, such as the severity of the offense, the effect of the offense on the victim and on the University community, the consequences of the sanction to the Respondent, and the offender's record of service and past offenses. Sanctions may include, but are not limited to, oral or written warning, suspension, expulsion, or termination of employment; provided that a tenured faculty member may not be dismissed except in accordance with the procedures set forth in the Faculty Code, Section F. The University may impose interim corrective action at any time, if doing so reasonably appears required to protect a member of the University community.

Redress of disciplinary action

Nothing in this policy or these procedures shall be deemed to revoke any right that any member of the University community may have to seek redress of a disciplinary action, such as a faculty member's right to maintain a grievance under the Faculty Code.

Confidentiality

The Coordinator and other investigators and decision-makers will strive to maintain confidentiality to the full extent appropriate, consistent with the need to resolve the matter effectively and fairly. The parties, persons interviewed in the investigation, persons notified of the investigation, and persons involved in the proceedings will be advised of the need for discretion and confidentiality. Inappropriate breaches of confidentiality may result in disciplinary action.

Retaliation

Retaliation against a person who reports, complains of, or provides information in a sexual harassment investigation or proceeding is prohibited. Alleged retaliation will be subject to investigation and may result in disciplinary action up to and including termination or expulsion.

False claims

A person who knowingly makes false allegations of sexual harassment, or who knowingly provides false information in a sexual harassment investigation or proceeding, will be subject to disciplinary action.

Time limits

The University aims to administer this policy and these procedures in an equitable and timely manner. Persons making allegations of sexual harassment are encouraged to come forward without undue delay. Established time limits may be extended for good cause, upon request.

Interpretation of policy

The Office of the Vice President and General Counsel is available to provide advice on questions regarding interpretation of this policy and these procedures.

Appendix A: Consultation Procedure

1. The consultation consists of one or more meetings between the Coordinator and the person who requests the consultation.
2. The Coordinator will provide a copy of the sexual harassment policy and procedures and respond to questions about them. The Coordinator may address and clarify the matter with the person, assist in developing strategies to deal with the matter, recommend counseling or other assistance, or determine that no further action is necessary.
3. The Coordinator will prepare a record of the consultation, which will be maintained by the Office of the Vice President and General Counsel. The record will be considered confidential to the full extent consistent with fairness and the University's need to take preventive and corrective action. If the record includes the name of a person against whom an allegation of sexual harassment has been made, the Office of the Vice President and General Counsel shall advise that person of the existence of the record. The file will not be revealed or released to any University authority outside the General Counsel's Office, nor will it be used in or otherwise affect any decisions regarding promotion, tenure, compensation, or other conditions of employment for faculty or staff, or the enrollment status and academic privileges of a student, unless a finding of sexual harassment has been made in accordance with these procedures.
4. When the Coordinator has reason to believe that criminal conduct may have occurred or that action is necessary to protect the health or safety of any individual, the University may, as the Office of the Vice President and General Counsel determines, refer the matter to appropriate authorities.

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5. Although consultation may be requested and an informal resolution procedure pursued within any reasonable time after the events giving rise to the consultation or informal resolution procedure, persons who believe they have been subjected to or who otherwise have observed sexual harassment are encouraged to seek assistance from the University through these procedures promptly.

Appendix B: Informal Resolution Procedure

1. A person who requests consultation (the "Person") may pursue an informal resolution.
2. The Coordinator will ask the Person to provide a factual account of the alleged harassment. The Coordinator may assist the Person to prepare a signed statement. If the Person declines to provide a signed statement, the Coordinator will prepare a written summary of the Person's oral allegations.
3. The Coordinator will furnish the Respondent with a copy of the signed statement or the written summary if there is no signed statement. The Coordinator will inform the Respondent of the allegation in sufficient detail to permit an informed response.
4. The Coordinator will investigate the alleged harassment as promptly as circumstances permit, will afford the Respondent a reasonable opportunity to respond to the allegation, and will advise the parties and persons interviewed or notified about the alleged harassment of the need for discretion and confidentiality.
5. Upon initiating an investigation, the Coordinator will inform University officials who would be charged with recommending corrective and disciplinary action ("responsible University officials") of the informal resolution procedure.
6. Upon concluding the investigation, the Coordinator will report on the matter to the responsible University official. The Coordinator will make every effort to resolve the matter informally. The resolution of the matter may include corrective or disciplinary action provided the Respondent consents. Any such corrective or disciplinary action shall be imposed by the responsible University official and be

within his or her discretion and consistent with his or her authority.

7. A responsible official will notify the parties of the disposition of the informal resolution procedure to the extent consistent with University policies, appropriate considerations of privacy and confidentiality, fairness, and applicable law.
8. The Coordinator will report the outcome of the informal resolution procedure to the responsible University official. If the matter has not been resolved informally, the Person who alleged harassment, the Respondent, or a responsible University official may initiate the formal complaint procedure.

Appendix C: Formal Complaint Procedure -- Special Panels

A. Initiation of special panel procedure

1. If a formal complaint is governed by the special panel complaint procedure, the party requesting to proceed with a formal complaint must file a written request with the Coordinator. The request must be filed within 15 business days after receipt of information from a responsible University official of the disposition of the informal resolution procedure (See Appendix B). The written request for a formal hearing must include a factual statement of the sexual harassment alleged and may include a statement of the relief requested.
2. The Coordinator will send a copy of the complaint to the responding party and the Associate Vice President for Human Resources (or designee). The respondent will be given sufficient particularities as to the alleged facts that the respondent may reasonably investigate the charge and prepare his or her defense, with reasonable and appropriate recesses and continuances being provided to all parties. If, after providing the responding party with a reasonable opportunity to respond, the Associate Vice President for Human Resources (or designee), after consultation with the Office of the Vice President and General Counsel, finds that the action(s) alleged could not reasonably be found to constitute sexual harassment under applicable law even if true, the complaint shall be dismissed if the respondent consents to such dismissal. Otherwise the Formal Complaint Procedure as outlined herein will continue.
3. An aim of the special panel process is to complete, if feasible, the formal complaint procedure within 45 business days of the Coordinator's receipt of the formal complaint request.

B. Establishment of special panels

1. A complaint filed under Appendix C will be heard by a five-member panel selected by lot by the Associate

Vice President for Human Resources (or designee), as described in Section C. Panelists will be selected from a pool of 30, ten of whom are faculty members appointed by the Vice President for Academic Affairs, with the concurrence of the Council of Deans and the Faculty Senate Executive Committee; ten of whom are staff employees appointed by the Vice President for Administrative and Information Services; and ten of whom are students appointed by the Dean of Students.

2. Each appointee to the pool ordinarily will serve a two year term. The appointing official should stagger the appointments so that, if feasible, the terms of not more than five of his or her appointees expire in any year.
3. An appointee to the pool (but not to a panel) may be removed and replaced at any time, at the discretion of the appointing official. The appointing official should promptly fill vacancies in the pool or a panel, according to the procedure in Section B.1 above.
4. The Assistant Vice President in the Office of Faculty Recruitment and Personnel Relations and the Director of the Office of Equal Employment Activities and the Dean of Students, or their designees, will conduct mandatory training of all appointees to the pool at the time of appointment and periodically thereafter; provided that no pool member shall receive such training while serving on a special panel. Training will address roles and responsibilities of panel members, complaint procedures, applicable policies, and other techniques and standards pertinent to the complaint and hearing process.

C. Selection of panel

1. Within five business days of receiving the written request to proceed with a formal complaint (see A.2, above), the Associate Vice President for Human Resources (or designee) will select by lot the five-member panel from the pool. Four of the panel members will be from the same status group as the Respondent

and one panel member will be from the same status group as the Complainant. No member of a faculty member's department or of a staff member's administrative departmental organization may serve on the special panel. Within the five-day period, the Associate Vice President for Human Resources (or designee) will notify the Coordinator of the names of the special panel members.

2. The Coordinator will notify the parties of the panelists' names. Within three business days of receipt of the notice, either party may submit to the Associate Vice President for Human Resources a written objection to designation of any panel member. The objection must clearly state the reasons for the objection. The Associate Vice President may, at his or her discretion, replace a challenged panelist with another member of the pool from the same status group.
3. A designated panelist who at any time has or may reasonably be perceived as having a conflict of interest or is otherwise unable to serve on a special panel shall recuse himself or herself, and notify the Associate Vice President for Human Resources of the recusal.

D. Scheduling hearing

1. The special panel members will meet within five business days after their appointment, to select a chairperson and set the hearing date and time. The hearing will be held within a reasonable time, normally 20 business days, after the special panel is appointed. Panel members may not communicate with either party outside the presence of the other party.
2. The special panel chairperson will notify the parties of the hearing date, time, and location at least seven business days before the hearing. Within two business days after receiving notice of the hearing, a party with a scheduling conflict may submit to the chairperson a request for postponement. The chairperson, after consulting the special panel members, has discretion to reschedule the hearing.

All parties will be notified as soon as feasible if the hearing is rescheduled.

3. If a party does not appear for the hearing within 30 minutes after the scheduled time, the special panel will decide whether to reschedule the hearing or proceed.

E. Conduct of hearing

1. The special panel chairperson will preside at the hearing and decide procedural issues. Only persons participating in the proceeding may be present during the hearing except as otherwise provided in these procedures. The hearing will be conducted in the following sequence:
 - (a) Preliminary matters. The chairperson will introduce the parties, their counsel or advisors, and the special panel members; review the order of proceedings; explain procedures that govern use of the tape recorder; and present a brief summary of the complaint.
 - (b) Opening statements. The party who requested the hearing may make an opening statement. The responding party may then make an opening statement. Each opening statement shall not exceed 15 minutes.
 - (c) Presentation of complaint. The party who requested the hearing may present to the panel testimony, witnesses, documents or other evidence. Following the testimony of the party who requested the hearing, and of each witness, the responding party may ask questions.
 - (d) Response to complaint. The party who responded to the complaint shall have a right to know prior to the hearing the contents of and the names of the authors of any written statements that may be introduced against him or her, and to rebut unfavorable inferences that might be drawn from such statements. The responding party may present

testimony, witnesses, documents or other evidence to the panel. Following the testimony of the responding party, and of each witness, the party who requested the hearing may ask questions. Following the testimony of the responding party, and of each witness, the party who requested the hearing may ask questions.

- (e) Closing statements. The party who requested the hearing may make a closing statement. The responding party may then make a closing statement. Each closing statement shall not exceed 15 minutes.
- 2. Special panel members may ask questions of parties or witnesses at any time during the hearing.
- 3. The hearing will not be conducted according to strict rules of evidence. However, the special panel chairperson may limit or exclude irrelevant or repetitive testimony, and may otherwise rule on what evidence may be offered.
- 4. When the hearing cannot be completed in one session, the special panel chairperson may continue the hearing to a later date and time.
- 5. The hearing will be recorded on audiotape. Either party may obtain from the Coordinator a copy of the recording at reasonable cost, on written request.

F. Witnesses

- 1. Each party (and the panel) may ask witnesses to testify at the hearing, but no person may be directed to testify other than the Complainant and any other person who gave evidence that has been considered by the panel. Information from persons able but unwilling to appear shall not be considered by the panel. Information from persons who cannot appear shall be subject to a ruling of admissibility by the Chair. The Chair may take reasonable steps to protect the witnesses against abuse or harassment, short of excusing their appearances.

2. At least three business days before the hearing, each party must provide the chairperson, the Coordinator and the other party a list of witnesses he or she intends to present at the hearing.
3. The special panel may request that additional witnesses appear. The Coordinator will, if feasible, arrange for the appearance of these witnesses.
4. Each party is responsible for notifying its witnesses of the hearing date, time, and location. A hearing will not necessarily be postponed because a witness fails to appear.
5. All witnesses will be excluded from the hearing before and after their testimony. A witness may be recalled at the discretion of the special panel chairperson.
6. A University employee must obtain permission from his or her supervisor to be absent from work to appear at a hearing. Employees will be paid while appearing at a hearing during working hours, but not for other time spent on the complaint during or outside working hours.
7. A student must obtain permission from his or her professor to be absent from class to appear at a hearing.
8. Supervisors and professors should be aware of the importance of hearings and not unreasonably withhold permission to appear at a hearing. If an employee or student needs assistance in obtaining permission to appear at a hearing, he or she should contact the Coordinator.

G. Advisors

1. Each party may be accompanied by not more than two advisors, who may be University employees or other persons the party selects; provided that not more than one of the advisors shall be acting in an attorney capacity.
2. No advisor may speak on behalf of the party, make an opening or closing statement, present testimony or

examine witnesses. The advisor's role is limited to assisting the party to prepare for the hearing and providing the party private advice during the hearing.

3. Notwithstanding the preceding paragraph, when a party is a faculty member and has active representation, the other party will also be allowed active representation. In that event each party shall identify one attorney, or other advisor, who throughout the proceeding may (but shall not be required to) speak on behalf of the party, make opening and closing statements, and examine witnesses.
4. A Complainant or Respondent who plans to be accompanied by an attorney or other advisor at the hearing must notify the Coordinator and the other party at least five business days before the hearing.
5. The special panel may request or the University may provide a University-furnished attorney or other advisor to be present at any hearing to advise the special panel.
6. The University may have an observer present at any hearing.

H. Decision after hearing

1. After the hearing, the special panel will meet in closed session to review the hearing and make a decision on the complaint, consistent with the substantial weight of the evidence. The decision must be approved by four-fifths of the special panel members. If the special panel concludes that sexual harassment occurred, it may recommend corrective or disciplinary action. The recommendation must be approved by a majority of the special panel members.
2. The special panel report of its decision must be in writing and set forth findings of fact, conclusions, and, where appropriate, recommendations for corrective or disciplinary action.

3. The special panel will submit the report of its decision to the Associate Vice President for Human Resources within ten business days after the hearing ends.
4. If the special panel concludes that sexual harassment occurred, the Associate Vice President for Human Resources will forward a copy of the special panel report to a University official responsible for implementing corrective or disciplinary action. After reviewing the special panel report, a responsible University official will decide whether to impose corrective or disciplinary action, consistent with that official's authority. Before issuing a final decision, the responsible University official will advise the Respondent of the proposed sanction, will permit the Respondent to review all parts of the special panel report on which the sanction is based, and will give the Respondent a reasonable opportunity to reply before the sanction is imposed. A responsible University official will notify the parties of the disposition, to the extent consistent with University policies, appropriate considerations of privacy and confidentiality, and applicable law. A responsible University official will send a copy of the special panel report to the parties (at their home addresses of record, by courier, overnight mail or certified mail, return receipt requested). The report sent to the parties may omit portions, to maintain consistency with University policies regarding confidentiality.

I. Review of special panel decision

1. A party dissatisfied with a special panel decision may submit a request for review to the Associate Vice President for Human Resources, who will transmit the request to the vice president(s) responsible for oversight of the status groups to which the parties belong. For example, when the Complainant is a staff member and the Respondent a faculty member, the Vice President for Administrative and Information Services and the Vice President for Academic Affairs will jointly review the matter; when Complainant and

Respondent are both faculty members, the Vice President for Academic Affairs will review the matter.

2. The request for review must be in writing and set forth reasons why the special panel decision should be modified or overturned. The review must be based on the hearing record and may not present new evidence or testimony.
3. The request for review must be submitted within 15 business days of the party's receipt of the special panel decision. If the request is not received by then, the special panel decision will be the final University decision on the complaint.
4. The Vice President(s) will strive to issue a final decision on the review within 20 business days following submission of the request for review. The decision of the Vice President(s) shall be the final decision on the complaint within the University.
5. When the special panel decision is final, or when the final decision on a review is issued, the Coordinator will provide a copy of it to the University official(s) responsible for implementing corrective or disciplinary action. Any corrective or disciplinary action taken shall be within the discretion and consistent with the authority of the responsible University official. A range of relevant considerations should be taken into account in determining the extent of sanctions, such as the severity of the offense, the effect of the offense on the victim and on the University community, the consequences of the sanction to the Respondent, and the offender's record of service and past offenses. Respondent will be promptly notified of the outcome.
6. A responsible University official will send a copy of the final decision to the parties (at their home addresses of record, by courier, overnight mail or certified mail, return receipt requested). The copy sent to the parties may omit portions, to maintain consistency with University policies regarding confidentiality.

**A RESOLUTION OPPOSING THE SPECIAL FEES FOR MAJORS IN THE
PROGRAMS OF THE SCHOOL OF MEDIA AND PUBLIC AFFAIRS (00/1)**

Whereas, the Student Association has adopted a resolution attacking these fees, and has explicitly sought the help of the Joint Committee of Faculty and Students; and

Whereas, while the fees are intended to provide and maintain, through an ongoing replacement fund, upgraded equipment for the use of students in programs which will be housed in the new SMPA building, not all students will use the equipment to the same degree, and not all users of that equipment will be charged (for instance, minors in those fields), which suggests that the fees are not completely equitable; and

Whereas, imposing additional non-tuition fees on undergraduate students majoring in SMPA must act as a deterrent to at least some students who might be interested in such majors (including students who need financial assistance or who use the University's tuition benefits program), which reduces students' freedom of choice among the University's programs; and

Whereas, such fees would establish a precedent which might be employed for any number of purposes in a variety of undergraduate programs throughout the University, and could understandably lead to divisive proprietariness regarding access to facilities, equipment and even faculty, which would not be in the University's interest in the long run; and

Whereas, obtaining the required funds through an across-the-board tuition increase would seem to be consistent with other budgetary decisions made by the University, would not significantly inconvenience students, has the support of the Student Association, and would avoid the inequities which this special fee creates: therefore,

**BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON
UNIVERSITY THAT**

The special fee to be imposed on majors in SMPA be rescinded, in favor of an increase in the overall tuition rate sufficient to cover the required costs of needed upgrades to SMPA equipment, and furthermore, that such a tuition increase be linked directly to the provision of funds for this purpose, as closely equivalent as possible to what would have been provided through the mechanism of the contested fee.

**Joint Committee of Faculty and Students
April 7, 2000**

Postponed, May 5, 2000, to September 8, 2000

**A RESOLUTION OPPOSING THE SPECIAL FEES FOR MAJORS IN THE
PROGRAMS OF THE SCHOOL OF MEDIA AND PUBLIC AFFAIRS (00/1)**

Whereas, the Student Association has adopted a resolution attacking these fees, and has explicitly sought the help of the Joint Committee of Faculty and Students; and

Whereas, while the fees are intended to provide and maintain, through an ongoing replacement fund, upgraded equipment for the use of students in programs which will be housed in the new SMPA building, not all students will use the equipment to the same degree, and not all users of that equipment will be charged (for instance, minors in those fields), which suggests that the fees are not completely equitable; and

Whereas, imposing additional non-tuition fees on undergraduate students majoring in SMPA must act as a deterrent to at least some students who might be interested in such majors (including students who need financial assistance or who use the University's tuition benefits program), which reduces students' freedom of choice among the University's programs; and

Whereas, such fees would establish a precedent which might be employed for any number of purposes in a variety of undergraduate programs throughout the University, and could understandably lead to divisive proprietariness regarding access to facilities, equipment and even faculty, which would not be in the University's interest in the long run; and

Whereas, obtaining the required funds through an across-the-board tuition increase would seem to be consistent with other budgetary decisions made by the University, would not significantly inconvenience students, has the support of the Student Association, and would avoid the inequities which this special fee creates; therefore,

**BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON
UNIVERSITY THAT**

The special fee to be imposed on majors in SMPA be rescinded, in favor of an increase in the overall tuition rate sufficient to cover the required costs of needed upgrades to SMPA equipment, and furthermore, that such a tuition increase be linked directly to the provision of funds for this purpose, as closely equivalent as possible to what would have been provided through the mechanism of the contested fee.

Joint Committee of Faculty and Students
April 7, 2000

Postponed, May 5, 2000, to September 8, 2000

Withdrawn, January 19, 2001

A RESOLUTION ON AMENDING RESOLUTION 99/2, "A RESOLUTION TO AMEND THE 1996 FACULTY CODE OF THE GEORGE WASHINGTON UNIVERSITY" (00/2)

WHEREAS, on December 10, 1999, the Faculty Senate adopted Resolution 99/2, "A Resolution to Amend the 1996 Faculty Code of The George Washington University," for the purpose of revising the faculty grievance procedures set forth in Article X of the Faculty Code (the "Code") and Section E of the Procedures for Implementing the Faculty Code (the "Procedures"); and

WHEREAS, the second sentence of Section E.7. of the Procedures, as revised by Resolution 99/2, would provide, under specified conditions, that a decision of the Hearing Committee or Dispute Resolution Committee on a faculty grievance would be deemed final and would be implemented by the University "unless the Vice President for Academic Affairs determines, after giving substantial deference to the findings and recommendations of the relevant Committee, that there are compelling reasons not to implement the relevant Committee's decision"; and

WHEREAS, the University Administration has requested that Resolution 99/2 be amended by removing the following clause from the second sentence of Section E.7. of the revised Procedures: "after giving substantial deference to the findings and recommendations of the relevant Committee," (the "Subject Clause"); and

WHEREAS, in an e-mail message sent to the Chair of the Faculty Senate Executive Committee on August 3, 2000 (copy attached to the agenda for the Faculty Senate's meeting of September 8, 2000), the Vice President for Academic Affairs stated that Administration desired the removal of the Subject Clause because "it goes beyond that which is already in the Code in other areas, and therefore destroys the parallelism of the Code"; and

WHEREAS, Section B.3. of the Procedures states that administrative nonconcurrences with faculty recommendations for tenure or promotion must be based on "compelling reasons," and Section IV.D.1. of the Code refers to the "compelling reasons" standard in providing for advisory reviews of departmental recommendations for tenure and promotion by school-wide personnel committees; and

WHEREAS, the references to the "compelling reasons" standard in Section B.3. of the Procedures and Section IV.D.1. of the Code do not contain a qualifying clause similar to the Subject Clause; and

WHEREAS, the Faculty Senate shares the University Administration's view that the "compelling reasons" standard should be given a consistent application wherever that standard is used in the Code and the Procedures; and

WHEREAS, in a Memorandum dated February 10, 1993 to all full-time faculty of the

2.

University (the "1993 Memorandum") (copy attached to this Resolution), the Faculty Senate Executive Committee set forth its interpretation of the "compelling reasons" standard as applied to administrative nonconcurrences in tenure and promotion cases; and

~~WHEREAS, the 1993 Memorandum refers to explanations of the "compelling reasons" standard contained in a 1993 interpretation by Committee T on College and University Government of the American Association of University Professors ("AAUP") as well as the Joint Statement on Government of Colleges and Universities adopted in 1966 by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges; and~~

~~WHEREAS, the 1993 Memorandum explains that the "compelling reasons" standard: (i) recognizes that the responsible faculty unit has "primary responsibility" and "a large measure of discretion" in recommending decisions in tenure and promotion cases; (ii) creates a "presumption in favor" of faculty recommendations and places a "heavy burden" on the University Administration in justifying a nonconcurrence with a faculty recommendation, and (iii) requires the Administration, in justifying a nonconcurrence, to show more than merely a "different conclusion" and instead requires the Administration to show "compelling reasons" such as overriding financial or programmatic constraints of the University, failure of the faculty to follow Code-mandated procedures, arbitrary or capricious faculty recommendations, or failure of the faculty to provide reasonable supporting evidence for its recommendations; and~~

~~WHEREAS, the Faculty Senate understands, for the reasons indicated above, that the "compelling reasons" standard requires substantial deference by the University Administration to faculty recommendations and further understands that the University Administration does not disagree is in general agreement with the interpretation of the "compelling reasons" standard set forth in the 1993 Memorandum; and~~

~~WHEREAS, based on such understandings, the Faculty Senate believes that including the Subject Clause in Section E.7. of the revised Procedures would involve unnecessary repetition and could cause undesirable confusion as to the proper interpretation of the "compelling reasons" standard in other sections of the Code and the Procedures; NOW, THEREFORE~~

BE IT THEREFORE RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY

That Resolution 99/2, "A Resolution to Amend the 1996 Faculty Code of The George Washington University," be amended by striking the following clause from the second sentence of Section E.7. of the revised Procedures for Implementing the Faculty Code: " , after giving substantial deference to the findings and recommendations of the relevant Committee,".

Executive Committee of the Faculty Senate
September 22, 2000

Adopted, as amended, October 13, 2000

approved by Board of Trustees 10/20/00



FACULTY SENATE

MEMORANDUM

February 10, 1993

TO: FULL-TIME FACULTY COLLEAGUES
FROM: Executive Committee, Faculty Senate
RE: Nonconcurrences; School-Wide Faculty Personnel Committees;
and the Faculty Code

As you may know from the Executive Committee reports to the Senate, two Administration nonconcurrences with faculty promotion recommendations are being reviewed by the Board of Trustees.

In the process of preparing the report for the Board of Trustees and through discussions with administrative officers and faculty, it became apparent that there are distinct variances in the definition of nonconcurrences, compelling reasons, and the role of the School-Wide Personnel Committees. There are also variances regarding the reading of the Faculty Code with respect to policy and procedures.

In the accompanying report the Executive Committee has attempted to provide an institutional and current reading of policy and process with regard to nonconcurrences, compelling reasons, and the faculty role in promotion and tenure decisions. In reviewing this document, please note that the GWU Faculty Code, approved by the Board of Trustees, follows the Joint Statement on Government of Colleges and Universities developed and accepted by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges in 1966.

Enclosure

REPORT OF THE EXECUTIVE COMMITTEE OF THE FACULTY SENATE

THE FACULTY CODE: RESPECTIVE ROLES OF FACULTY AND
ADMINISTRATION IN PROMOTION AND TENURE DECISIONS

I. OVERVIEW OF THE PROCESS

1. The review of the candidate is made by the Departmental Committee(s) on Promotion and/or Tenure in accordance with University, School, and Department criteria and procedures.
2. The recommendation is forwarded to the Academic Dean.
3. The Academic Dean seeks advice of the School-Wide Personnel Committee.
4. The Academic Dean determines whether he/she will sustain the recommendation or noncur and advises the Academic Vice President accordingly.
5. In the event of a nonconcurrence by either the Dean or the Vice President, the relevant Department and the Executive Committee are notified.
6. The Executive Committee meets separately with the Department Chair/representative; and the Dean. If a resolution cannot be achieved and neither party withdraws, the matter, with an accompanying report from the Executive Committee, is forwarded to the Board of Trustees for resolution.

II. THE FACULTY CODE AND TENURE/PROMOTION: INTERPRETATION AND PROCEDURES

The Faculty Code provides that tenure and promotion recommendations "shall normally follow faculty recommendations" and that "departures from the standard shall be limited to those cases involving compelling reasons." A nonconcurring administrative officer must show "compelling reasons" and must give "supporting reasons" for the nonconcurrence. [Faculty Code, p.19, Par. 3 & 4]

For reasons of the special nature of faculty self-governance and the presumption of the specialized professional qualifications of the recommending faculty, the faculty is given a large measure of discretion by the Faculty Code. Under the Code, in the case of a nonconcurrence, a heavy burden of overcoming a presumption in favor of the Department's recommendation is placed upon the Dean. As indicated, the latter must identify the "compelling reasons" for his/her nonconcurrence. [Faculty Code, p.19, Par. 3]

Institutionally the term "compelling reasons" has been interpreted as constituting more than a different conclusion on the part of the administrator. "Compelling reasons" have been identified as: financial constraints of the University; programmatic constraints; failure of the faculty to conform to published promotion or tenure procedures; arbitrary and capricious recommendations; insufficient supporting evidence provided by the Department; and inadequacy of the reasons presented by the Department. The Code, as noted above, also requires that the administrative official who nonconcurs

provide "supporting reasons." [Faculty Code, p.19, Par. 4]

The George Washington University Faculty Code follows the Joint Statement on Government of Colleges and Universities, developed and accepted in 1966 by the American Association of University Professors, the American Council on Education, and the Association of Governing Boards of Universities and Colleges. The section from the Joint Statement pertaining to the role of the faculty vis-à-vis personnel actions is as follows:

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail. [AAUP, Section V, p.109, Par. 3]

It would seem reasonable to expect a nonconcurrence to include the following:

1. A statement of nonconcurrence, with explicit conclusions;
2. A reasoned justification of the nonconcurrence, citing explicit factual findings and professional judgments, and referring in explicit terms to the record submitted with the recommendation; and

3. Specific detailed findings with supporting evidence relating to the alleged shortcoming with regard to the individual faculty member's professional achievement, quality of work, and general or specific professional reputation, in order to demonstrate "compelling reasons."

The nonconcurrence, then, should be supported by findings sufficient to rebut and overcome the evidence submitted in support of the faculty recommendation.

III. RECENT PROVISIONS IN THE FACULTY CODE: ROLES OF RESPECTIVE PARTIES

The Faculty Code, the Joint Statement, and traditional practice identify the Department Committee as the group with primary professional expertise with respect to the candidate's record. In establishing the School-Wide Personnel Committees [Senate Resolutions 91/6 and 91/9], the intent of the Faculty Senate and the Committee on Appointment, Salary, and Promotion Policies which presented the Resolutions was that these groups serve as multiple disciplinary decanal advisory groups rather than to impose a substantive judgment on top of that of the departments. They are explicitly advisory to the Dean; they were not intended to substitute their judgment for that of the Department faculty. Resolutions 91/6 and 91/9

establishing School-Wide Personnel Committees read as follows:

D. School-Wide Personnel Committees

Res. 91/6 To implement the procedures required in Sections B.3 and C.2 above, each school or college shall establish a school-wide personnel committee, either as an elected standing committee or of the school faculty acting as a committee of the whole, to consider recommendations for appointments with tenure, promotion, or tenure of regular full-time faculty. Such committees may request additional information, documentation, or clarification respecting such recommendations. Further:

1. An elected standing committee, sitting in review of recommendations originating from a department or equivalent unit, shall advise the dean of that school or college whether the candidate has met the relevant school and department criteria, and whether it has identified any "compelling reasons" which may exist for not following the departmental or unit recommendation. Such advisories shall not be construed as "faculty recommendations" as defined by Section B.3 of the Procedures for Implementation of the Faculty Code.

Res. 91/9 2. When the faculty of a school or college, sitting as a committee of the whole, serves as the school's personnel committee, and initiates recommendations to the dean for appointments and actions affecting renewal of appointments, promotion, tenure designation, and termination of service, such recommendations shall be construed as "faculty recommendations" in the sense of the Procedures, Section B.3.

The role of the Executive Committee of the Faculty Senate with respect to nonconcurrences should also be considered. Composed of one elected representative from each school, it is not intended to function as yet another committee reviewing the specific qualifications of the candidate. The Executive Committee, like the advisory personnel committees of the Schools and the Dean, is not,

as a group, professionally qualified to evaluate de novo the substantive conclusions of the faculty. The role of the Executive Committee is an institutional one, to serve the process, not to independently substitute its judgment for that of the Department faculty. It seeks to obtain an agreeable resolution through examination of both the recommendation and the nonconcurrence.

Institutional experience indicates that the interpretation of the Faculty Code and the role of the relevant groups within the tenure/promotion process, as outlined above, is appropriate. In the majority of cases, concurrence has been reached through internal discussion and debate. As verified by past experiences, the University has been effectively served by its system of faculty self-governance to solve internal problems and disagreements.

February 10, 1993

From *Academe* Sept.- Oct. 1993

The Standard of "Compelling Reasons" in the *Joint Statement on Government of Colleges and Universities*

*An interpretation approved in May 1993 by Committee T on
College and University Government*

Responding to inquiries from officers of several of AAUP's state conferences, Committee T discussed the "compelling reasons" standard set forth in the *Joint Statement on Government of Colleges and Universities*. The *Statement on Government* provides that "[t]he governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail." What, members of Committee T considered, are reasons that can be described as compelling? Committee members noted in their discussion that the "compelling reasons" standard calls for something much stronger than mere disagreement with a faculty judgment. The standard should be consistent with the provision in the *Statement on Government* that the faculty has primary responsibility for faculty status and related matters. It would be inconsistent, however, with broader principles of shared authority and collegiality to expect the administration and governing board to resist the presumption in favor of the faculty judgment only if they can show that their reason for doing so is compelling in the sense of irresistible.

Committee T concluded that a compelling reason involves more than disagreement with faculty judgment but is not one that virtually commands a decision. Even if the administration and governing board are persuaded that the faculty judgment is incorrect, they should reverse it only on that rare occasion when they can provide convincing reasons for rejecting the faculty's presumed academic expertise. A compelling reason should be one which plainly outweighs persuasive contrary reasons.

THE GEORGE WASHINGTON UNIVERSITY

Faculty Senate

Friday, December 10, 1999

A RESOLUTION TO AMEND THE 1996 FACULTY CODE OF THE GEORGE
WASHINGTON UNIVERSITY (99/2)

WHEREAS, Faculty Senate instituted a Special Faculty Committee to Study the Faculty Grievance Procedures under the Chairmanship of Professor M. Cheh of the GW Law School,

and,

WHEREAS, The Executive Committee of the Faculty Senate received the Special Committee's final report on October 15, 1997,

and,

WHEREAS, the Professional Ethics and Academic Freedom Committee was requested by the Executive Committee to examine the report and to recommend changes to Article X of the Faculty Code and to Section E of the Procedures for the Implementation of the Faculty Code,

BE IT THEREFORE RESOLVED by the Faculty Senate of The George Washington University that:

The Faculty Code of The George Washington University be amended as follows:

Key: Changes to existing Faculty Code language as proposed by the 10/15/97 Report of the Special Senate Committee to Study the Faculty Grievance Procedures ("Cheh Report"), with modifications thereto adopted by the PEAFC Committee at its meeting on 11/12/99, are shown in underline for new language and ~~strikeout~~ for deletions.

Professional Ethics and Academic Freedom Committee
November 12, 1999

Adopted, as amended, December 10, 1999

Faculty Code

...

X. RIGHTS, PRIVILEGES, AND RESOLUTION OF DISPUTES UNDER
THIS CODE

A. Rights and Privileges Under This Code

The rights, privileges, and responsibilities of a faculty member, as conferred by this Code, shall be carefully safeguarded in accordance with the highest accepted principles, practices, and procedures of the academic community. An alleged infringement of such rights or privileges or an alleged violation of such responsibilities shall first be considered by the faculty member or members concerned, or by appropriate representatives of the faculty, in cooperation with the responsible administrative officers. If such consideration does not lead to an adjustment satisfactory to the parties involved, the procedures for the implementation of this Article shall be fully utilized.

B. Grievances

To maintain a grievance, the complaining party must allege that he or she has suffered a substantial injury resulting from violation of ~~professional~~ rights or privileges concerning academic freedom, research or other scholarly activities, tenure, promotion, reappointment, dismissal, or sabbatical or other leave, arising from:

1. Acts of discrimination prohibited by federal or local law;
2. Failure to comply with ~~follow~~ the Faculty Code, or Faculty Handbook, or other rules, regulations, and procedures established by the University;
3. Arbitrary and capricious actions on behalf of the University ~~actions~~; or arbitrary and capricious applications of federal or local statutes and regulations; or
4. Retaliation for exercise of Code-protected rights.

Procedures for the Implementation of the Faculty Code

...

E. Procedures for Implementation of Article X of the Faculty Code

1. Informal Resolution

Before instituting ~~any formal proceedings concerning an alleged violation of the Faculty Code~~ a formal grievance, the aggrieved party ~~or parties~~ shall make exhaust all reasonable efforts to achieve a resolution of the situation through informal consultation with the appropriate faculty members and administrative officers.

2. Dispute Resolution Committee

The Faculty Senate shall elect a Dispute Resolution Committee of fifteen tenured, active-status faculty members, no more than three of whom shall be members of the faculty of any one school (except that four may be members of the faculty of Columbian School and four may be members of the Law School) and none of whom may be serving as academic administrators. The members of the Committee shall serve three-year staggered terms so that the terms of five of the members shall expire each year. The Faculty Senate shall designate the Chair of the Committee from among the members of the Committee. Alternate temporary members may be appointed at any time by the Executive Committee to facilitate the dispute resolution procedures.

3. Preliminary Proceedings

If informal consultation fails to resolve the matter or if the aggrieved party concludes that such consultation is not feasible or would be futile, the aggrieved party shall refer the dispute to the Dispute Resolution Committee by means of a letter addressed to the Chair with copies sent to the Chair of the Executive Committee of the Faculty Senate and to the Vice President for Academic Affairs on behalf of the University. ~~of the Executive Committee. The Executive Committee, once it has made its own determination that all reasonable efforts to achieve a resolution through informal consultation have been exhausted, shall appoint either a special mediator or a special mediation committee of three members, none of whom shall be members of the Dispute Resolution Committee;~~

~~and this mediator or mediation committee shall conduct an informal investigation of the matter and attempt to effect expeditiously a mutually satisfactory solution. The appointment shall be recorded in the minutes of the Faculty Senate. The letter shall identify the general nature and circumstances of the dispute. Unless either the University or the aggrieved party objects, the Chair of the Dispute Resolution Committee shall promptly appoint a special mediator of appropriate qualifications to assist the University and the aggrieved party to resolve the dispute.~~

c) ~~The special mediator or mediation committee shall report to the Executive Committee, with copies to the parties, only that a mutually satisfactory solution has been achieved, in which case the report should set forth the basis of the settlement or that it has been concluded that further efforts at mediation would be futile. The Special mediator shall report to the chair of the dispute resolution committee that a mutually satisfactory solution has been achieved, in which case the grievance shall be dismissed, or that efforts at mediation were unsuccessful.~~

4. Formal Proceedings

a) Commencement of Proceedings

~~1) - If the preliminary proceedings do not result in a mutually satisfactory resolution of the dispute, any party to the dispute may commence formal proceedings by means of a complaint addressed to the Chair of the Dispute Resolution Committee, with copies sent to the Chair of the Executive Committee of the Faculty Senate and the other party or parties.~~

1) If either party declines to mediate or to continue to mediate, or if efforts at mediation are unsuccessful, the aggrieved party may commence formal proceedings by means of a grievance sent to the Chair of the Dispute Resolution Committee, with copies sent to the Chair of the Executive Committee of the Faculty Senate and to the Vice President for Academic Affairs on behalf of the University.

2) The grievance shall identify the aggrieved party as the "Grievant" and shall name The George Washington University as the "Respondent". A grievance may not be brought against faculty members of the University, acting in their individual capacities as faculty members. Consistent with Article X.B., a grievance may only be maintained against the University for official acts. The Vice President for Academic Affairs shall identify the appropriate faculty member or administrative official who shall act on behalf of the University as Respondent.

3) The grievance shall set forth with particularity the nature of the dispute, specifying, consistent with Article X.B., the rights or privileges under the Faculty Code alleged to have been violated, the specific act or acts alleged to constitute the violation, and the identity of the remedy sought and the reasons alleged to justify the remedy. The grievance shall also set forth the Grievant's efforts to resolve the dispute informally, or if no such efforts were made, the reasons for failing to make such efforts. No grievance may be maintained on the basis of error that did not affect the substantial rights of the complainant Grievant.

4) Within twenty calendar days of receipt of the grievance the other party or parties to the dispute University shall reply in writing, sending copies of the reply to the Chair of the Dispute Resolution Committee, the Chair of the Executive Committee of the Faculty Senate, and the complaining party or parties Grievant. The reply shall set forth with particularity the position of the replying party or parties University with respect to each allegation of the grievance.

b) Hearing Committee and Hearing Officer

1) Upon receipt of the complaint and reply Within a reasonably prompt period of time, ordinarily within ten calendar days of receipt of the grievance and reply, the Chair of the Dispute Resolution Committee shall, with the advice of the Executive Committee of the Faculty Senate, appoint a Hearing Committee of three members from among the members of the Dispute Resolution Committee and a presiding Hearing Officer from a panel of names previously approved by the Executive Committee. The Chair of the Dispute Resolution Committee shall designate one member of the Hearing Committee to

~~serve as the presiding Hearing Officer. The Hearing Officer shall be chosen from among University personnel of~~ have appropriate experience and training but need not be an attorney. ~~The role of the Hearing Officer throughout these procedures is to~~ The Hearing Officer, in addition to serving as a full member of the Hearing Committee, shall assure an orderly, expeditious, and relevant hearing, to assure the development of a complete, fair, and reliable record, and to advise the Hearing Committee as to issues of substance and procedure. The Hearing Committee may request the replacement of the Hearing Officer at any time.

2) No member of the same department as ~~a party~~ the Grievant shall sit on the Hearing Committee. Any party to a dispute may disqualify one member of the Hearing Committee by peremptory challenge. Any party may also seek to disqualify any member of the Hearing Committee for cause. The Chair of the Dispute Resolution Committee shall decide any challenges for cause, based on written submissions from the parties. The Chair of the Dispute Resolution Committee shall, from among the remaining members of the Dispute Resolution Committee, fill any vacancies on the Hearing Committee created by challenges.

3) When all challenges have been decided and vacancies filled, and as soon as reasonably possible after receipt of ~~respondent's reply~~ the grievance and reply, the ~~chair of the Dispute Resolution Committee~~ Hearing Officer shall convene the Hearing Committee to review the grievance. If a majority of the Hearing Committee, after an opportunity for argument by the parties, finds that the grievance does not allege facts sufficient to state a grievance under the Code, or that the grievance is based on evidence or allegations substantially the same as those that have previously been heard or decided, or that could have been presented in a previous hearing, the grievance shall be automatically referred to the Dispute Resolution Committee for consideration at the earliest reasonable time. If a majority of the Dispute Resolution Committee, after an opportunity for argument by the parties, agrees ~~concludes~~ that for any of the reasons set out in this section a hearing is not warranted, the grievance shall be dismissed, in whole or in part, and the matters dismissed shall be deemed closed.

4) On the determination that a hearing is warranted, the ~~Hearing Committee shall be convened by the presiding Hearing Officer and~~ Hearing Officer shall promptly convene the Hearing Committee, which shall establish a schedule for the hearing. Grievances shall be heard and decided with reasonable dispatch, and, ordinarily, shall be completed by the Hearing Committee within three months after the determination that a hearing is warranted.

5) All three members of the Hearing Committee shall be present during the hearings and deliberations of the Committee, except that the presence of one of them during part of the proceedings may be waived by agreement of the parties.

6) It shall be the duty of the Hearing Officer to convene promptly the meetings of the Hearing Committee and to preside; to assure the expeditious disposition of the case; to rule on all questions of ~~substance or~~ procedure necessary to the conduct of the hearing, subject to being overridden by ~~a majority vote of~~ the other two members of the Hearing Committee; ~~to ask questions and~~ to control the development of testimony and of evidence in the record ~~as deemed appropriate~~; to prepare or assign the writing of an ~~draft~~ opinion ~~for the use~~ on behalf of the Hearing Committee; and to advise the Hearing Committee in its deliberations on questions of substance and procedure. The Hearing Officer ~~does not vote on the~~ is a full member of the Hearing Committee, and the Hearing Committee shall decide all ultimate questions of fact, substance, procedure, or policy, ~~as these are acted upon by the Hearing Committee~~ by majority vote. The Hearing Officer shall sign dispositive orders ~~of the~~ on behalf of the Hearing Committee only to authenticate them.

7) Members of the Hearing Committee, members of the Dispute Resolution Committee, and the parties shall avoid ex parte communications bearing on the substance of the dispute.

c) Procedure for Hearings

1) The parties to the proceedings shall be entitled to appear in person and to be represented by counsel or other adviser.

2) A grievance procedure is not a formal judicial proceeding. Its purpose is to provide a fair evaluation of an allegation that a right or privilege has been violated. In order to achieve that end, the Hearing Committee shall have authority to call any material witness who is a member of the University faculty, administration, or staff and any other person who is willing to testify; to question parties and witnesses; to exclude matters it deems irrelevant; to place reasonable limits on arguments, the presentation of evidence, and the questioning of witnesses by the parties. The University ~~will make a reasonable effort to facilitate the appearance of witnesses~~ shall use its best efforts to assure the appearance of all faculty, administration, and staff reasonably called to testify.

3) The procedure at the hearings shall be informal but shall comply with the requirements of fairness to the parties. The Hearing Committee is not required to comply with rules of evidence applicable in courts of law and may receive any relevant evidence that is not privileged. The Hearing Committee may decline to consider evidence when its probative value is outweighed by considerations of unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. The parties shall be entitled to testify on their own behalf; to call as material witnesses any member of the University faculty, administration, or staff and any other person who is willing to testify; to present written and other evidence; and to cross-examine witnesses called by other parties. A party shall be entitled to inspect and copy, in advance of the hearing, all ~~any~~ relevant documents in the control of the other party and not privileged and may offer such documents or excerpts therefrom in evidence. ~~The University will make a reasonable effort to facilitate the appearance of witnesses.~~

4) The parties shall be entitled to present opening and closing statements.

5) A stenographic record of the hearings shall be made and one copy, which shall be available to all parties, kept on file by the University.

6) The hearings shall be open to the public unless, on the motion of a party or the Hearing Committee, the Hearing Committee shall determine that it is in the best interest of the University and the parties that the hearings be closed.

7) At the conclusion of the presentation of evidence and argument from both sides, the Committee shall convene in closed session to deliberate and reach a decision in closed session. In rendering its decision, the Hearing Committee shall not substitute its judgment for that of the maker of the decision being challenged. Rather it shall determine whether the Grievant has established by clear and convincing evidence that he or she has suffered a substantial injury pursuant to Article X.B. ~~resulting from: 1) acts of discrimination prohibited by federal or local law; 2) the decision maker's failure to follow the Faculty Code, or Faculty Handbook, or other rules, regulations, and procedures established by the University; 3) arbitrary and capricious applications of federal or local statutes and regulations; or 4) retaliation for exercise of Code protected rights.~~

8) The Hearing Committee shall render its findings and recommendations in a written opinion ~~report~~ that shall state the number of members subscribing to the opinion ~~report~~ and shall include dissenting opinions, if any. This opinion ~~report~~ shall be submitted to the Chair of the Dispute Resolution Committee ~~Executive Committee of the Faculty Senate~~, and copies shall be transmitted to the parties and to the Chair of the Executive Committee of the Faculty Senate ~~Dispute Resolution Committee~~.

9) The hearing procedures shall be concluded and the Hearing Committee's findings and recommendations shall be rendered as soon as practicable.

5. Appeals

a) Any party may appeal the final decision of the Hearing Committee by filing a notice of appeal with the Chair of the Dispute Resolution Committee and sending copies thereof to the Chair of the Executive Committee of the Faculty Senate and to the other parties. The notice of appeal must be filed within ten calendar days of the receipt of the decision of the Hearing Committee.

b) An appeal shall be heard by members of the Dispute Resolution Committee who were not members of the Hearing Committee, provided that members of the Dispute Resolution Committee who were disqualified from sitting as members of the Hearing Committee and members of the same department as the Grievant ~~any of the parties~~ shall not participate in the hearings of the appeal. A quorum for hearing an appeal shall be two-thirds of those members of the Dispute Resolution Committee eligible under the terms of this section.

c) The parties to an appeal shall be entitled to present written and oral argument. However, evidence not introduced in the hearing may not be considered on appeal.

d) The Dispute Resolution Committee shall decide by majority vote and render an opinion in writing, sustaining, modifying, overruling, or remanding the decision of the Hearing Committee. ~~Copies of the opinion shall be transmitted to the parties and the Chair of the Executive Committee of the Faculty Senate.~~

6. Remedies.

A Hearing Committee and the Dispute Resolution Committee may recommend that the University action being challenged be upheld, modified, reconsidered or remanded under specified conditions, or reversed, in whole or in part. A Hearing Committee and the Dispute Resolution Committee may not include as part of their recommendations any damages for nonpecuniary losses, punitive damages, or any other actions or measures outside of the scope of the underlying University action being challenged.

5.7. Final Disposition

~~[When the time for filing an appeal has expired without an appeal having been commenced, or when the appeal process has been completed and a final decision has been rendered, the record of the case, including the decisions of the Hearing Committee and the Dispute Resolution Committee, shall be transmitted to the President and the Board of Trustees for final disposition. In the absence of a timely appeal filed by either party from a decision of a Hearing Committee, or after a decision of the Dispute Resolution Committee, such decision shall be transmitted to the parties, to the Chair of the Executive Committee of the Faculty Senate, and to the Vice President for Academic Affairs. The decision of the relevant Committee shall be deemed final and shall be implemented by the University unless the Vice President for Academic Affairs determines, that the relevant Committee's decision is clearly erroneous and should not be implemented, in which case, AFTER GIVING SUBSTANTIAL DEFERENCE TO THE FINDINGS AND RECOMMENDATIONS OF THE RELEVANT COMMITTEE, THAT THERE ARE COMPELLING REASONS NOT TO IMPLEMENT THE RELEVANT COMMITTEE'S DECISION. IN THE EVENT OF SUCH A DETERMINATION, the Vice President shall transmit his or her determination (INCLUDING AN EXPLANATION OF SUCH COMPELLING REASONS) and recommendation, and the record of the case through the President of the University to the Board of Trustees, or, at the election of the Grievant, solely to the President, with copies to the Grievant and the Chairs of the Dispute Resolution Committee and the Executive Committee of the Faculty Senate, for a prompt decision of the President or the~~

5.7. Final Disposition Board of Trustees.

~~In the absence of a timely appeal filed by either party from a decision of a Hearing Committee, or after a decision of the Dispute Resolution Committee, such decision shall be transmitted to the parties, to the chair of the Executive Committee of the Faculty Senate, and to the Vice President for Academic Affairs.~~

*Resolution 00/2
Faculty Senate
amendment
October 13, 2000*

A RESOLUTION ACCEPTING WITH APPROVAL THE REPORT OF THE JOINT FACULTY/ADMINISTRATION TASK FORCE ON THE PROPOSED COLLEGE OF PROFESSIONAL STUDIES (00/3)

WHEREAS, the Faculty Senate has given careful consideration to the complex issues arising out of the proposed College on three occasions; has delegated or received detailed reports on the proposal from three committees, and has had the benefit of both a presentation by the present coordinator and of detailed discussion at a day conference of broad campus representation; and

WHEREAS, the Faculty Senate appreciates that the approach to professional education proposed for the College of Professional Studies is an important contemporary development in higher education that The George Washington University can and should employ to its advantage; and

WHEREAS, in an appreciation of the diverse and complex interests, both administrative and academic, that required extended negotiation and consultation in planning for the new college, the Faculty Senate sought the good counsel of a special joint faculty/administrative task force; and

WHEREAS, the Joint Faculty/Administrative Task Force has produced, after some months of investigation and deliberation, a comprehensive consensus document (the "Report") that appears to be an effective working plan for the implementation of the new college; and

WHEREAS, the Faculty Senate recognizes that amendments to the Faculty Code, as the basic charter for faculty participation in university governance, may prove necessary to reconcile with the current Code certain practices and procedures recommended for the effective administration of the new College of Professional Studies; **NOW, THEREFORE**

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY

- (1) That the Faculty Senate of The George Washington University hereby (a) expresses its considerable thanks to the Joint Faculty/Administration Task Force for its sustained, diligent and creative work and for its very useful Report; and (b) expresses its approval in principle of the Report of the Joint Faculty/Administration Task Force; and hereby forwards the Report to the President and the Board of Trustees for their consideration; and
- (2) That the Faculty Senate agrees, upon acceptance of the Report by the Board, to draft and consider amendments to the Faculty Code consistent with the Joint Faculty/Administration Task Force's recommendations.

(continued)

- (3) That the Faculty Senate requests, in the event a College of Professional Studies or similar organization be established, (a) that during each of the first years of activity of the new organization the VPAA present a report to the Faculty Senate on its activities and achievements, and (b) that the Executive Committee of the Faculty Senate organize, during the fourth year of the organization's existence, a full review of the extent to which the goals set forth in the Joint Task Force Report are being met and sound academic quality being achieved.

Executive Committee of the Faculty Senate
September 22, 2000

Adopted, as amended, October 13, 2000

**A RESOLUTION REQUESTING THE UNIVERSITY ADMINISTRATION
TO TAKE APPROPRIATE MEASURES TO DISCOURAGE INFRINGEMENT BY
STUDENTS AND OTHER PERSONS OF FACULTY MEMBERS'
INTELLECTUAL PROPERTY RIGHTS IN THEIR COURSE PRESENTATIONS (00/4)**

WHEREAS, the Faculty Senate understands that, at the University and at many other institutions of higher learning, students and other persons attending courses (i) have sold summaries of faculty course presentations to commercial enterprises and other parties for the purpose of enabling those parties to sell the course summaries for profit, and (ii) have sold to commercial enterprises and other parties, for the same purpose, written course-related materials created and distributed by faculty members to students in their courses; and

WHEREAS, the George Washington University Copyright Policy recognizes that classroom presentations of academic material by faculty members and materials created by faculty members for distribution to students in their courses (hereinafter collectively referred to as "Course Presentations") are the intellectual property of the instructors (except where the Copyright Policy expressly grants to the University an ownership interest in Course Presentations); and

WHEREAS, faculty members and University administrators have agreed that the University should discourage students and other persons from infringing the intellectual property rights of faculty members in their Course Presentations;

**NOW, THEREFORE, BE IT RESOLVED BY THE FACULTY SENATE OF THE
GEORGE WASHINGTON UNIVERSITY**

(1) That the Faculty Senate hereby requests the University Administration to take appropriate measures to discourage students and other persons attending courses in the University from infringing the intellectual property rights of faculty members in their Course Presentations.

(2) That, as an example of such appropriate measures, the Faculty Senate requests the University Administration to include the following prohibitory statement in the University's Guide to Student Rights and Responsibilities and in all class schedules ~~all course bulletins~~ issued by the University or any of its schools, departments and other teaching units:

**Prohibition against Unauthorized Commercial Use of
Faculty Course Presentations**

The George Washington University prohibits students and other persons attending courses from (i) recording or summarizing, for commercial purposes, classroom presentations by faculty members or (ii) redistributing, for commercial purposes, materials created and distributed by faculty members to students in their courses. Accordingly, unless the instructor has given express permission for such conduct,

students enrolled in (and other persons attending) any course may not sell or otherwise distribute for commercial purposes to any person classroom lecture notes, course summaries, course handouts, illustrations, presentation materials or other items that have been prepared or assembled by the instructor or that summarize, record or depict the instructor's presentation. This prohibition does not apply to either (a) a student who provides such materials, without charge, to other students enrolled in the same course for their non-commercial and educational use, or (b) a person who provides such materials in accordance with arrangements made through the University's Disability Support Services and disclosed in advance to the instructor. Violation by a student of the prohibition described in this paragraph is a violation of the University's Code of Student Conduct and will subject the violator to discipline under that Code.

(3) That the Faculty Senate requests the University Administration to pursue appropriate disciplinary action under the Code of Student Conduct against any student who violates the prohibition described in the foregoing resolving clause after the prohibition has been published in the University's Guide to Student Rights and Responsibilities. ~~a University course bulletin covering the school, department or other teaching unit in which such student is enrolled.~~

Executive Committee of the Faculty Senate
December 15, 2000

Adopted, as amended, January 19, 2001

**A RESOLUTION WITH RESPECT TO ACTION TAKEN BY THE
UNIVERSITY'S BOARD OF TRUSTEES IN RESPONSE TO
RESOLUTION 99/2, "A RESOLUTION TO AMEND THE 1996
FACULTY CODE OF THE GEORGE WASHINGTON UNIVERSITY" (00/5)**

WHEREAS, subsequent to its two-year study a special committee of faculty and administration representatives recommended revisions to the faculty grievance procedures, and these were considered with input from the University's General Counsel office by the Committee on Professional Ethics and Academic Freedom, which then prepared Resolution 99/2; and

WHEREAS, on December 10, 1999, the Faculty Senate adopted Resolution 99/2, "A Resolution to Amend the 1996 Faculty Code of The George Washington University," for the purpose of revising the faculty grievance procedures set forth in Article X of the Faculty Code and Section E. of the Procedures for the Implementation of the Faculty Code; and

WHEREAS, on October 13, 2000, in response to a request by the University's Administration, the Faculty Senate adopted Resolution 00/2 for the purpose of amending one provision of Section E. of the Procedures for the Implementation of the Faculty Code as revised by Resolution 99/2; and

WHEREAS, the University Administration in forwarding Resolutions 99/2 and 00/2 to the Board of Trustees recommended changes, which the Faculty Senate had not had an opportunity to consider, to seven provisions of the Revised Section E. Procedures, and these were adopted by the Board on October 20, 2000; and

WHEREAS, as shown in the Exhibit accompanying this Resolution, several of the changes are of special concern because they altered the provisions in a substantive and significant manner, including a change in the text of Section E.5.a) that improperly substituted "findings and recommendations" for "final decision," and the heading of Section E.6., which similarly improperly substituted "Recommendations" for "Remedies," both of which changes intentionally and erroneously described a Grievance in terms inconsistent with the true nature of such a procedure as an arbitration proceeding, where "decisions" and "remedies" are rendered, not mere "findings" or recommendations" which the University administration can follow, or ignore, in its discretion; such changes in terminology were previously proposed by the Administration on several occasions but were rejected unanimously by the Faculty members of both a Subcommittee and full Committee of the Professional Ethics and Academic Freedom Committee of the Faculty Senate; and

WHEREAS, of further great concern is the seventh change which altered the second sentence of Section E.6. in a substantive and significant manner, because (i) this change prohibits a Hearing Committee and the Dispute Resolution Committee from rendering any award of "monetary damages," which term was substituted for "damages for nonpecuniary losses, so that such things as loss of wages, loss of research grant, etc., could not be included in a Grievance decision, and (ii) an identical change,

previously proposed by University officials, was formally presented to and rejected by the Faculty Senate when it adopted Resolution 99/2 on December 10, 1999; and

WHEREAS, it appears that the Board did not understand, when it adopted the Revised Section E. Procedures, that the seven changes recommended by University officials had not been previously approved by the Faculty Senate; and

WHEREAS, Article IX of the Faculty Code recognizes the principle of shared governance between the regular, active-status faculty, the officers of the Administration, and the Board of Trustees; and

WHEREAS, in accordance with this principle of shared governance the Board has consequently adopted amendments to the Faculty Code only after such amendments have been previously presented to the Faculty Senate for its review and recommendation; and

WHEREAS, the Faculty Senate has not had an opportunity to review, debate and act on the ~~revisions to~~ above-described seven new provisions of Section E. of the Procedures for the Implementation of the Faculty Code as approved by the Board;

NOW, THEREFORE BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY

(1) That the Faculty Senate requests that the Board of Trustees, in accordance with established practice, provides an opportunity for the Faculty Senate to consider and make recommendations with respect to the ~~revisions to~~ above-described seven new provisions of Section E. as approved by the Board; and

(2) That the Faculty Senate reaffirms its commitment to the principles and established practice of shared governance within the University, and expresses its strong conviction that amendments to the Faculty Code should be made only after such amendments have first been presented to the Faculty Senate for its review and recommendation; and

(3) That hereafter, the Faculty Senate asks, consistent with Section IX. B. of the Faculty Code, that Faculty Senate resolutions and reports be forwarded to the Board of Trustees without modification, whether accompanied by additional administration recommendations or not.

Professional Ethics and Academic Freedom Committee
February 23, 2001

Adopted, as amended, March 9, 2001

EXHIBIT

4. Formal Proceedings

....

b) Hearing Committee and Hearing Officer

....

4) On the determination that a hearing is warranted, the Hearing Officer shall promptly convene the Hearing Committee, which shall establish a schedule for the hearing. Grievances shall be heard and decided with reasonable dispatch, and, ordinarily, shall be completed by the Hearing Committee within three months after the determination that a hearing is warranted. However, due consideration shall be given to the University's normal academic calendar.

5) ~~All three~~ Members of the Hearing Committee shall be present during the hearings and deliberations of the Committee, except that the presence during part of the proceedings of one of ~~them~~ the two not serving as the Hearing Officer ~~during part of the proceedings~~ may be waived by agreement of the parties.

6) It shall be the duty of the Hearing Officer to convene promptly the meetings of the Hearing Committee and to preside; to assure the expeditious disposition of the case; to rule on all questions of procedure necessary to the conduct of the hearing, subject to being overridden by the other two members of the Hearing Committee; to control the development of testimony and of evidence in the record; to prepare or assign the writing of an opinion on behalf of the Hearing Committee; and to advise the Hearing Committee in its deliberations on questions of substance and procedure. The Hearing Officer is a full member of the Hearing Committee, and the Hearing Committee shall decide all ultimate questions of fact, substance, procedure, or policy, by majority vote. The Hearing Officer shall sign dispositive orders on behalf of the Hearing Committee.

7) Members of the Hearing Committee, members of the Dispute Resolution Committee, and the parties shall avoid ex parte communications bearing on the substance of the dispute.

c) Procedure for Hearings

1) The parties to the proceedings shall be entitled to appear in person and to be represented by counsel or other adviser.

2) A grievance procedure is not a formal judicial proceeding. Its purpose is to provide a fair evaluation of an allegation that a right or privilege has been violated. In order to achieve that end, the Hearing Committee shall have authority to call any material witness who is a member of the University faculty, administration, or staff and any other person who is willing to testify; to question parties and witnesses; to exclude matters it deems irrelevant; to place reasonable limits on arguments, the presentation of evidence, and the questioning of witnesses by the parties. The University will make a reasonable effort to facilitate the ~~shall use its best efforts to assure the~~ appearance of all faculty, administration, and staff reasonably called to testify.

3) The procedure at the hearings shall be informal but shall comply with the requirements of fairness to the parties. The Hearing Committee is not required to comply with rules of evidence applicable in courts of law and may receive any relevant evidence that is not privileged. The Hearing Committee may decline to consider evidence when its probative value is outweighed by considerations of unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. The parties shall be entitled to testify on their own behalf; to call as material witnesses any member of the University faculty, administration, or staff and any other person who is willing to testify; to present written and other evidence; and to cross-examine witnesses called by other parties. A party shall be entitled to inspect and copy, in advance of the hearing, all relevant documents in the control of the other party and not privileged and may offer such documents or excerpts therefrom in evidence.

4) The parties shall be entitled to present opening and closing statements.

5) A stenographic record or tape recording of the hearings shall be made and one copy, which shall be available to all parties, kept on file by the University.

6) The hearings shall be open to the public unless, on the motion of a party or the Hearing Committee, the Hearing Committee shall determine that it is in the best interest of the University and the parties that the hearings be closed.

7) At the conclusion of the presentation of evidence and argument from both sides, the Committee shall convene in closed session to deliberate and reach a decision. In rendering its decision, the Hearing Committee shall not substitute its judgment for that of the maker of the decision being challenged. Rather it shall determine whether the

Grievant has established by clear and convincing evidence that he or she has suffered a substantial injury pursuant to Article X.B.

8) The Hearing Committee shall render its findings and recommendations in a written opinion that shall state the number of members subscribing to the opinion and shall include dissenting opinions, if any. This opinion shall be submitted to the Chair of the Dispute Resolution Committee, and copies shall be transmitted to the parties and to the Chair of the Executive Committee of the Faculty Senate.

9) The hearing procedures shall be concluded and the Hearing Committee's findings and recommendations shall be rendered as soon as practicable.

5. Appeals

a) Any party may appeal the ~~final decision~~ findings and recommendations of the Hearing Committee by filing a notice of appeal with the Chair of the Dispute Resolution Committee and sending copies thereof to the Chair of the Executive Committee of the Faculty Senate and to the other parties. The notice of appeal must be filed within ten calendar days of the receipt of the decision of the Hearing Committee.

b) An appeal shall be heard by members of the Dispute Resolution Committee who were not members of the Hearing Committee, provided that members of the Dispute Resolution Committee who were disqualified from sitting as members of the Hearing Committee and members of the same department as the Grievant shall not participate in the hearings of the appeal. A quorum for hearing an appeal shall be two-thirds of those members of the Dispute Resolution Committee eligible under the terms of this section.

c) The parties to an appeal shall be entitled to present written and oral argument. However, evidence not introduced in the hearing may not be considered on appeal.

d) The Dispute Resolution Committee shall decide by majority vote and render an opinion in writing, sustaining, modifying, overruling, or remanding the decision of the Hearing Committee.

6. ~~Remedies~~ Recommendations

A Hearing Committee and the Dispute Resolution Committee may recommend that the University action being challenged be upheld, modified, reconsidered or remanded under specified conditions, or reversed, in whole or in part. A Hearing Committee and the Dispute Resolution Committee may not include as part of their recommendations any monetary damages, ~~for nonpecuniary losses~~, punitive damages, or

any other actions or measures outside of the scope of the underlying University action being challenged.

7. Final Disposition

In the absence of a timely appeal filed by either party from a decision of a Hearing Committee, or after a decision of the Dispute Resolution Committee, such decision shall be transmitted to the parties, to the Chair of the Executive Committee of the Faculty Senate, and to the Vice President for Academic Affairs. The decision of the relevant Committee shall be deemed final and shall be implemented by the University unless the Vice President for Academic Affairs determines that there are compelling reasons not to implement the relevant Committee's decision. In the event of such a determination, the Vice President shall transmit his or her determination (including an explanation of such compelling reasons) and recommendation, and the record of the case through the President of the University to the Board of Trustees, or, at the election of the Grievant, solely to the President, with copies to the Grievant and the Chairs of the Dispute Resolution Committee and the Executive Committee of the Faculty Senate, for a prompt decision of the President or the Board of Trustees.

A RESOLUTION ON THE
REVISED DRAFT OF THE SEXUAL HARASSMENT POLICIES AND PROCEDURES (00/6)

WHEREAS, on October 27, 1997 the Vice President for Academic Affairs forwarded a draft of the Sexual Harassment Policies and Procedures to the Faculty Senate for its review and consideration; and

WHEREAS, the policy includes proscription of not only quid-pro-quo harassment but also of conduct that has the "effect" of creating an "intimidating, hostile, or offensive academic or work environment;" and

WHEREAS, good faith discussion of important academic matters relating to issues of gender may have such an effect on some students, while being regarded as desirable by other students and by faculty; and

WHEREAS, the Faculty Senate and its committees and its subcommittees, together with an Ad Hoc Committee of representatives of both administration and faculty, with the assistance of outside counsel provided by the administration also considered the Sexual Harassment Policies and Procedures, issuing a January 10, 2000 draft, and, following intense criticism by faculty members, including many from the Law School, a modified March 30, 2000 draft; and

WHEREAS, the Faculty Senate at three meetings intensively considered the proposal and recommended further changes ; and

WHEREAS, the administration then retained an additional outside law firm to review the proposed Policy and Procedures, and the firm recommended that the procedures be changed back largely to the January 10 Ad Hoc Committee draft, even though that draft had been later rejected-substantially modified by the Ad Hoc Committee, declared "deeply flawed" in a unanimous straw vote of 22 members of the Law School faculty and rejected by the Faculty Senate itself; and

WHEREAS, the administration's current "Revised Draft" eliminates basic fair process protections for those accused of harassment including:

- A. The right to a copy of the complaint
- B. The right to know the identity of the complainant
- C. The right to discover all adverse hearsay information, ~~documents and the names of adverse witnesses.~~
- D. The right to a hearing prior to the imposition of any sanction without consent of the

accused

E. The right to an independent, impartial decision-maker

F. The right to confront and question persons giving adverse information

G. The right to compel the attendance of witnesses, including the complainant, or to exclude evidence from persons unwilling or unable to appear

H. The clear indication that the University, not the accused, has the burden of proof

I. The right to a copy of the decision by the Coordinator, the special panel, or the University; and

WHEREAS, the Revised Draft is far less protective of the rights of faculty respondents than the Statement of Student Rights and Responsibilities, still to be applied in cases where students are the respondents; and

WHEREAS, the Faculty Senate has been advised by counsel faculty members from the Law School that the Revised Draft is not compelled by law, nor could government officials consistently with the Constitutional requirement of due process of law compel such procedures; and

WHEREAS, the "Revised Procedures" would force accused faculty members desiring to be afforded basic procedural rights to file civil actions against the University in court, thus subjecting the parties to unnecessary anxiety and expense, and

WHEREAS, an incorrect finding of sexual harassment may unjustly end an academic career; and

WHEREAS, the procedures would encourage risk-averse faculty to eliminate all controversial material relating to issues of gender from their syllabi and class discussions and to refrain from employment of research assistants of the opposite sex

NOW, THEREFORE, BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY THAT:

The Faculty Senate regards the Revised Draft as patently unfair to persons accused of sexual harassment.

The Faculty Senate believes the Revised Draft will chill freedom of academic expression and academic freedom.

The Faculty Senate withholds its formal approval of the Revised Draft

The Faculty Senate implores urgently requests the University President to reject suspend acceptance of

the Revised Draft and accept the May 5, 2000 recommendation of the Faculty Senate and direct the preparation, in consultation with the Faculty Senate, of a re-draft of the Sexual Harassment Policies and Procedures with the goal of more fairly balancing the procedural rights of the respondents with the creation of an appropriate process that does not discourage complainants.

Approved by the Committee on Professional Ethics and Academic Freedom
January 26, 2001

Postponed, April 13, 2001, to Special Senate Meeting, April 27, 2001

Adopted, as amended, April 27, 2001, by the Faculty Senate

A RESOLUTION OF APPRECIATION (00/7)

WHEREAS, John Gordon Boswell will retire in May as Professor Emeritus of Education after 39 years of service to The George Washington University; and

WHEREAS, John Gordon Boswell has earned the respect and gratitude of the entire University community; NOW, THEREFORE

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY

THAT the following citation be issued:

In recognition of his life-long commitment to learning and his contributions to the educational process over his 39 years as a Professor of Education; and

In recognition of the legions of supportive alumni he has generated; and

In recognition of his many thoughtful contributions to the resolution of the numerous issues that have concerned the academic community over the years; and

In recognition of his independence, his integrity, his logical articulation, and his use of the highest principles of behavior in the application of judgment; and

Especially in recognition of his twelve years of dedicated service as a member of the Faculty Senate, including six years on the Executive Committee serving two years as Chair, two years as Chair of the Public Ceremonies Committee, two years as Chair of the University Development and Resources Committee, and four years as Chair of the Appointment, Salary and Promotion Policies Committee;

THE FACULTY SENATE

OF

THE GEORGE WASHINGTON UNIVERSITY

CITES

PROFESSOR JOHN GORDON BOSWELL

FOR

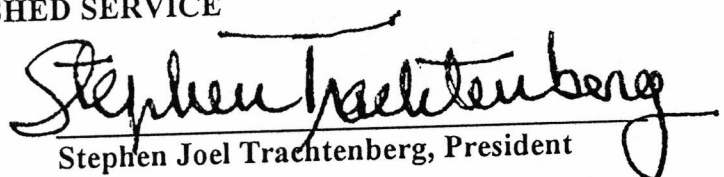
DISTINGUISHED SERVICE



April 13, 2001

Adopted by acclamation

April 13, 2001


Stephen Joel Trachtenberg, President